

Calendar No. 451

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-241

CIBOLA NATIONAL WILDLIFE REFUGE, CALIFORNIA

MARCH 9, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 417]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 417) to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

H.R. 417 revokes Public Land Order 3442, dated August 21, 1964, insofar as it included approximately 140 acres in Imperial County, California (in the Cibola National Wildlife Refuge). H.R. 417 directs the Secretary of the Interior to resurvey and publish the new boundaries of the Refuge. The effect of the bill is to transfer administrative jurisdiction over the 140-acre parcel from the U.S. Fish and Wildlife Service to the Bureau of Land Management.

BACKGROUND AND NEED

H.R. 417 will correct an error made in the designation the Cibola National Wildlife Refuge (NWR). In 1964, Public Land Order 3442 withdrew approximately 16,600 acres of public domain lands along the Colorado River in California and Arizona for the Cibola NWR. The withdrawal erroneously included approximately 140 acres in Imperial County at the southern boundary of the California portion of the refuge.

Prior to 1964, this property fell under the jurisdiction of the Bureau of Land Management (BLM) and, beginning in 1962, the BLM issued a permit for a public recreation concession on 18 acres of the

lands now in question. Because neither the Fish and Wildlife Service nor the BLM recognized the mistake in legal descriptions on the ground, the BLM continued to renew the original permit and the recreational concession use has continued, unbroken, to the present time. However, given the discovery of the past mistake, neither the BLM nor the Fish and Wildlife Service have the authority to continue issuing the concession contract.

LEGISLATIVE HISTORY

H.R. 417 was introduced by Representative Hunter on January 28, 2003 and was passed by the House of Representatives on March 19, 2003. A similar bill, H.R. 3937, was passed by the House in the 107th Congress, but was not acted upon by the Senate. The Subcommittee on Public Lands and Forests held a hearing on H.R. 417 on June 4, 2003. S. Hrg. 108–68. At the business meeting on February 11, 2004, the Committee on Energy and Natural Resources ordered H.R. 417 favorably reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on February 11, 2004, by a unanimous vote of a quorum present recommends that the Senate pass H.R. 417.

The rollcall vote on reporting the measure was 23 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Domenici	
Mr. Nickles	
Mr. Craig	
Mr. Campbell *	
Mr. Thomas	
Mr. Alexander	
Ms. Murkowski	
Mr. Talent	
Mr. Burns	
Mr. Smith *	
Mr. Bunning	
Mr. Kyl *	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan *	
Mr. Graham *	
Mr. Wyden *	
Mr. Johnson *	
Ms. Landrieu *	
Mr. Bayh *	
Mrs. Feinstein *	
Mr. Schumer *	
Ms. Cantwell	

* Indicates vote by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 revokes a portion of Public Land Order 3442 that established the Cibola National Wildlife Refuge in August 21, 1964

for the purpose of excluding specific lands from the refuge, totaling 140 acres. The effect of the revocation is to transfer administrative jurisdiction over the lands from the U.S. Fish and Wildlife Service to the Bureau of Land Management. The lands to be conveyed include a BLM concession known as “Walker’s Camp.” The Committee understands that there is a proposal to expand the size and scope of the existing concession operation, which currently occupies approximately 18 acres. The Committee does not intend for the transfer of the 140 acres from the Fish and Wildlife Service to the BLM to be viewed as an endorsement of any development of the lands in question. The Committee expects that any management changes proposed by the BLM for the affected acreage will be made through the agency’s standard planning process, with full opportunity for public involvement and comment from interested parties. These management changes should be consistent with existing uses and compliment the purposes of the neighboring refuge lands.

The Committee does not intend for the transfer of these lands from the U.S. Fish and Wildlife Service to the BLM to result in any substantive change in the natural, cultural and historical resources located on the land. The Committee expects that the BLM will safeguard these resources, including any sacred sites or trails, in consultation with affected Indian tribes.

Section 2 directs the Secretary of the Interior to resurvey and notice of modified boundaries.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, February 25, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 417, an act to revoke a public land order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 417—An act to revoke a public land order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California

CBO estimates that H.R. 417 would have no significant impact on the federal budget. The bill could increase both offsetting receipts and direct spending, but we estimate that any such effects would be negligible. The bill would not affect revenues. H.R. 417 contains no intergovernmental or private-sector mandates as de-

financed in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 417 would revoke Public Land Order 3442 as it pertains to 140 acres of land within the Cibola National Wildlife Refuge in California. By doing so, the bill would effectively remove those lands from the refuge and return them to the jurisdiction of the Bureau of Land Management (BLM). According to BLM, this change would allow the agency to renegotiate a lease with a private concessionaire who currently operates recreational facilities on the affected lands. Based on information from the agency, CBO estimates that any change in offsetting receipts from lease payments, and subsequent spending of those receipts, would be negligible.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 417. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 417, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendation relating to H.R. 417 is set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 24, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on H.R. 417, an Act to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.

H.R. 417 would revoke a small portion of Public Land Order 3442, dated August 21, 1964. This Public Land Order withdrew approximately 16,600 acres of public domain lands along the Colorado River in California and Arizona for the Cibola NWR. The withdrawal erroneously included a small area of approximately 140 acres in Imperial County at the southern boundary of the California portion of the refuge. A similar bill, H.R. 3937, was passed by the House last year, but was not acted upon by the Senate.

Prior to 1964, this property fell under the jurisdiction of the Bureau of Land Management (BLM) and, beginning in 1962, the BLM issued a permit for a public recreation concession on the lands now in question. Because neither the Service nor the BLM recognized

the mistake in legal descriptions on the ground, the BLM continued to renew the original permit and the recreational concession use has continued, unbroken, to the present time, although the BLM lease did expire in April 2002. The concession and location are commonly known as “Walters Camp,” which consists of a recreational vehicle park, a small marina, and a store, and the BLM estimates that Walter’s Camp receives 11,000 visitors per year.

The National Wildlife Refuge System Administration Act of 1966, as amended, (Act) requires that all uses of refuge lands be compatible with the purpose for which the refuge was established. Section 4(a) of the Act and section 204(j) of the Federal Land Policy and Management Act both prohibit the Secretary of the Interior from revoking withdrawals of land within NWRs. For this reason, Congressional action is required to remove these lands from the Refuge System.

Since the inclusion of these lands in the Public Land Order was a mistake, due to the prior existence of the concession, we believe the most equitable solution is removal of the lands from the refuge. There are no listed species inhabiting the 140 acres and the area in question is, at best, marginal wildlife habitat. Removal of the 140 acres of land from the refuge would free-up the area necessary for the continuation of the recreational concession, while still affording more than adequate protection for the nearest significant wildlife habitat feature, Three Fingers Lake.

We believe that the withdrawal of these lands will benefit all parties involved—the concessionaire, the Service, the BLM and, ultimately, the public. For this reason, we support the bill and urge prompt action on enactment of H.R. 417.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration’s program.

Sincerely,

REBECCA W. WATSON,
Assistant Secretary for Land and Minerals Management.

CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 417, as ordered reported.